IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18085 of 2006

With

SPECIAL CIVIL APPLICATION No. 18088 of 2006

To

SPECIAL CIVIL APPLICATION No. 18092 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INTEGRATED PROTEINS PVT. LTD., - Petitioner(s)
Versus
CHIEF CONTROLLING REVENUE AUTHORITY & 2 - Respondent(s)

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Appearance :
MR PREMAL R JOSHI for the Petitioners.
Mr. K.L.Pandya, Assistant GOVERNMENT PLEADER for the Respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 06/03/2007

ORAL JUDGMENT

The present petitions have been preferred against the orders dated 13/14.12.2006 passed by the Deputy Collector of Stamps, Jamnagar as well as against the orders passed by the appellate authority for not condoning delay, in preferring appeal, under section 32-B of the Bombay Stamps Act, 1958.

2. I have heard the learned advocate for the petitioners who has mainly submitted that both the impugned orders deserve to be quashed and set aside mainly for the reason that thoroughly non-speaking orders have been passed by the Collector, Stamps, Jamnagar; secondly for the reason that this order was issued in total defiance of sub-section (4) of section 32-A of the Bombay Stamps Act, 1959; thirdly for the reason that no notice was given for enhancement of the stamp duty valuation; fourthly for the reason that no basis for enhancement of stamp duty has ever been supplied to the petitioners nor it is referred in the impugned order; fifthly for the reason that the order passed by the

Collector of Stamps is an ex parte order without giving any opportunity of being heard to the petitioner; sixthly for the reason that the Jantri upon which the Collector of Stamps, Jamnagar is relying upon was has never been supplied to the petitioners. The figure of market value fixed by the Collector which is at Rs. 54,64,700/- cannot come in the mind of the Collector from heavy or sky. There must be some basis and calculation and some date. No such facts have ever been revealed in the show cause notice nor in the impugned order. Never the Collector of Stamps, Jamnagar has followed Rules 4 and 8 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984. Rules 4 and 8 of the Rules, 1984 impose duty upon the Collector to follow the procedure for determination of the market value and also give guidelines which factors must be considered while arriving at a market value. Neither Rule 4 nor rule 8 of the Rules, 1984 have been complied with. Likewise, the appellate authority has also passed a thoroughly non-speaking order. The appellate authority has also not properly appreciated sub-section 2 of section 29 of the Limitations Act, 1963 which clearly impose a duty upon the appellate authority to verify the reasons for condonation of delay which are referred in sections 4 and 24 of the Limitation Act, 1963. There is no express exclusion of applicability of

these sections, under the Bombay Stamps Act, 1958 and therefore, in absence of any such provision of express exclusion under Bombay Stamps Act, 1958, always sections 4 and 24 of the Limitations Act, 1963 are applicable in reckoning days of delay in appeal pending before appellate forum. This aspect of the matter has not been properly appreciated by the appellate authority. Even the order passed by the Deputy Collector is challenged before higher forum. The same Deputy Collector, Stamp duty Valuation has rejected the delay condonation application. In fact, the appellate authority can reject the delay condonation application and not the same Deputy Collector, Stamp Duty Valuation. Thus, there is a gross non-application of mind by the appellate authority.

3. I have heard the learned Assistant Government Pleader who has submitted that an appeal has been provided under section 32-B of the Bombay Stamps Act, 1958 which ought to have been preferred within 90 days from the date of order passed under section 32-A of the Act of 1958 and there is no provision for condonation of delay. Hence, the delay has not been condoned. Nonetheless, it is fairly submitted by the learned Assistant Government Pleader that no reasons have been assigned in the order passed by the Collector of Stamp

Duty, Jamnagar for arriving at a market value.

4. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, in my opinion, the orders dated 13.12.2004 passed by the Collector of Stamps, Jamnagar as well as the orders passed by the appellate authority for non-condonation of delay are required to be quashed and set aside for the following facts and reasons:

(i) The impugned order passed by the Collector of Stamps, Jamnagar is thoroughly non-speaking order. No reasons, worth the name, have been assigned in the order at Annexure “A” to the memo of the petition. Even this fact, the learned Assistant Government Pleader could not deny. In Special Civil Application No. 18085 of 2006 the market value paid by the petitioner for the property in question was Rs. 2,43,170/- and the sale was registered on 20th July, 1996. After eight years, the notice was issued on 7th October, 2004. The valuation fixed by the respondent authority was Rs. 54,64,700/- (approximately 27 times higher valuation). How the respondent authorities have arrived at this figure is not known to the petitioners nor it is revealed in the show cause notice nor it is revealed in the impugned order. The

figure cannot come in the mind of the Collector from heaven or sky. The reasons ought to have been given for arriving at this figure. In absence of any reasons worth the name, the impugned orders deserve to be quashed and set aside, as it is thoroughly a non-speaking order.

(ii) It also appears from the facts of the case that the Collector of Stamps, Jamnagar has not followed Rules 4 and 8 of the Rules of 1984. These Rules impose an obligation upon the Collector of Stamps, Jamnagar to follow the procedure for arriving at market value and several factors have been referred by the Rules to be kept in mind while arriving at market value. None of these factors have been considered by the Collector. Thus, the impugned order passed by the Collector of Stamps, Jamnagar is in gross violation of Rules 4 and 8 of the Rules of 1984. The impugned orders passed by the Collector of Stamps, Jamnagar is an ex parte order without giving any opportunity of being heard to the petitioners.

(iii) The burden of proof of proving higher market value is upon the respondents. The value of the property in question as per the registered document dated 20th July, 1996 is Rs. 2,43,170/-, whereas it is the

respondents who have arrived at the market value of the property in question at R. 54,64,700/-. The burden of proof of 26 times higher valuation is upon the respondents,

> “Affirmanti, non negenti, incumbunt onus probatio.”

(The burden of proof lies upon him who affirms and not upon him who denies.). Thus, the cardinal principle of burden of proof enshrined in sections 101 and 102 of The Indian Evidence Act has not been properly appreciated at all by the Collector of Stamps, Jamnagar. It has been held by this Court in the following cases

(i) In the case of Nandadevi Dineshkumar Sharma V/s. Chief Controlling Revenue Authority and others reported in **2006(2) GLH 775**.

(ii) In the case of New Kalindi Karnavati Co-Op.Housing Society Ltd. V/s. State of Gujarat and others reported in **2006(2) GLR 1735**.

(iii) In the case of Mayurkumar Jayendrabhai Patel V/s. Deputy Collector, Rajkot and another reported in (**2006)12 GHJ 514**.

(iv) In the case of Vinaybhai P.Patel V/s. State of Gujarat and another reported in (**2006)12 GHJ 533**.

(v) In the case of A.P.M.C., Patan V/s. State of Gujarat and another reported in (**2006)12 GHJ 538**.

(vi) In the case of Manubhai Vaghjibhai Dabhi V/s. State of Gujarat and another reported in (**2006)12 GHJ 646**.

(vii) In the case of Bhanuben Vallabhbhai Patel V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.6160 of 2006**.

(viii) In the case of Jayshri Oil Mill – Through its administrator & PAH V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.6159 of 2006**.

(ix) In the case of Chandrikaben Karshandasbhai Fichadiya V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.6158 of 2006**.

(x) In the case of Deep Construction Company through power of attorney V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.6157 of 2006**.

(xi) In the case of Jogindrapal Bhagvandas Khanna V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.6156 of 2006**.

(xii) In the case of Samanbhai Goganbhai

Odedara V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.6154 of 2006**.

(xiii) In the case of Kirtikumar Gandalal Gotecha and another V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.6150 of 2006**.

(xiv) In the case of Mansukhlal Chhaganlal Pithva and another V/s. Deputy Collector and others decided on 20th June,2006 in **Special Civil Application No.1866 of 2006**.

(xv) In the case of Kamleshbhai Kanjibhai Patel and others V/s. Deputy Collector, Rajkot and others decided on 20th June,2006 in **Special Civil Application No.1707 of 2006**.

(xvi) In the case of Indian Oil Corporation Limited V/s. State of Gujarat and another decided on 2nd May,2006 in **Special Civil Application No.1450 of 2006 with SCA Nos.6400, 8399, 8527, 8587, 8590, 9221 of 2006**.

(xvii) In the case of Bharatkumar Haribhai Jagani and another V/s. Deputy Collector and others decided on 9th January,2006 in **Special Civil Application No.24464 of 2005**.

(xviii) In the case of Pravin Trikamjibhai Patel and others V/s. Deputy Collector and others decided on 5th December,2005 in **Special Civil Application No.21094 of 2005**.

(xix) In the case of Dilipkumar Gangjibhai Lalkiya and another V/s. Deputy Collector and others decided on 10th October,2005 in **Special Civil Application No.18064 to 18068 of 2005 with 18070/2005 with 18073/2005**.

(xx) In the case of Bhal Nalkantha Khedoor Mandal V/s. State of Gujarat decided on 26th July,1999 in **Special Civil Application No.1731 of 1999 (Coram: Hon'ble Chief Justice Mr.K.G.Balakrishnan and Hon'ble Mr.Justice S.D.Dave)**.

(xxi) In the case of Buthabhai Merabhai Bharwad V/s. State of Gujarat and another reported in **2005(2) GLR 1792**.

(xxii) In the case of Pradhyaumanbhai Mohanlal Patel V/s. State of Gujarat and others reported in **2003(1) GLR 454**.

that the Collector of Stamps ought to discharge his burden of proof, speaking orders ought to be passed, Rules 4 and 8 of the Rules, 1984 ought to be followed. Copies of the documents upon which the Collector is relying upon ought to be supplied to the petitioners. The facts of the present case are such that the dispute is already covered by the aforesaid decisions. Thus, the impugned order passed by the Collector of Stamps duty Valuation, Jamnagar is an ex-parte order, no reasons have been assigned and no basis is supplied. Thus, this is an arbitrary order. Arbitrariness and equality are

sworn enemies of each other. When arbitrariness is present, equality is always absent. Thus, the impugned orders passed by the Collector are violative of Article 14 of the Constitution of India.

(vi) The appellate authority has not properly appreciated sub-section (2) of section 29 of the Limitations Act, 1963 which read as under:

> “29(2) Savings:- (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872(9 of 1872).
> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

Thus, if there is no express exclusion of applicability of sections 4 to 24 of the Limitation Act, 1963, the same are applicable for condonation of delay in an appeal preferred before appellate authority under section 32-B of the Bombay Stamps Act, 1958. The appellate authority, ought to, consider the delay condonation application as per sections 4 to 24

of the Act of 1963 whenever any appeal is preferred under section 32 of the Act of 1958. Looking to the provisions of the Act of 1958, there is no provision for exclusion of applicability of sections 4 to 24 of the Act of 1963. Hence, as per sub-section (2) of section 29 of the Act of 1963, sections 4 to 24 of the Act of 1963 shall be applicable even to appeals preferred under section 32-B of the Bombay Stamps Act, 1958. This aspect of the matter has also not been properly appreciated by the appellate authority. Hence, the order at Annexure "B" dated 16th December, 2006 is required to be quashed on this ground also.

(v) The delay condonation application ought to have been decided by the appellate authority and not by the Deputy Collector, Stamp Duty Valuation. It is not brought on record by the respondents that such an application for condonation of delay has been rejected by the appellate authority. In fact, looking to Annexure "B" it appears that the delay condonation application has been dismissed by the Deputy Collector, Stamp Duty Valuation. Government of Gujarat must keep in mind that the order challenged before the appellate authority is of the Collector of

Stamps. The appellate authority must decide delay condonation application and therefore, the Collector, Stamp Duty Valuation cannot dismiss the delay condonation application.

5. As a cumulative effect of the aforesaid facts, reasons, judicial pronouncements and the provisions of law, the impugned orders passed by the Collector of Stamps Duty Valuation, Jamnagar as well as appellate authority at Annexures “A” and “B” are hereby quashed and set aside and looking to the breach of fundamental rights enshrined under Article 14 of the Constitution of India, instead of remanding the matter to the appellate authority, the matters are hereby remanded to the Collector of Stamps Duty Valuation, Jamnagar for its fresh decision, who will hear the petitioners and pass appropriate speaking order after taking into consideration all the above-mentioned factors and judicial pronouncements. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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